

HEALTH SERVICES AND DEVELOPMENT AGENCY

*** MINUTES**

AUGUST 22, 2012

AGENCY MEMBERS PRESENT

Johnson, D. Lynn, Chair
Burns, Charlotte, Vice-Chair
Mills, Thom
Southwick, William
Gaither, Keith, designee for the TennCare Director
Jordan, Lisa, designee for the Commissioner of Commerce and Insurance
Weaver, Faye, designee for the Comptroller of the Treasury

AGENCY MEMBERS ABSENT

Byrd, Claudia
Doolittle, Robert S.
Haik, Barrett, M.D.
Wright, James

AGENCY STAFF PRESENT

Hill, Melanie, Executive Director
Bobbitt, Melissa, Administrative Services Assistant III
Christoffersen, Jim, General Counsel
Craighead, Alecia, Statistical Analyst III
Farber, Mark, Assistant Executive Director
Finchum, Rhonda, Director of Administrative Services
Wells, Phil, Health Planner III

COURT REPORTER

Deen, Meschelle Manley

GUESTS PRESENT

Adams, Anca, Esq., Waller Lansden & Dortch
Brent, Michael D., Esq., Bradley Arant Boult Cummings, LLP
Brierly, John R., M.D.
Brotherton, Matthew, Esq., Kramer Rayson, LLC
Chabrew, Jaysan, Analyst, Outpatient Imaging Affiliates, LLC
Crowley, Cheri, Interim Executive Director, HighPoint Hospice
Cutshall, Alyson, Vice President, Caris Healthcare
Dreyfuss, Mike, Esq., Waller Lansden & Dortch
Duncan, Bruce, Vice President, National HealthCare Corporation
Elrod, Dan H., Esq., Butler, Snow
Gibbs, Matt, Trauger & Tuke
Haberman, Ralf, Medical Director, Odyssey Hospice
Harris, Vickie, Consultant, Continuum Connexions
Herman, Michael, COO, HighPoint Health System
Houchin, Barbara, Executive Director, Planning, Saint Thomas Health Services

HEALTH SERVICES AND DEVELOPMENT AGENCY
AUGUST 22, 2012 MEETING

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Huggins, Mike, Senior Executive Consultant, Tennessee Hospital Association
Looney, Kim Harvey, Esq., Waller Lansden Dortch & Davis
Mann, Daryl F., O.D.
Martin, Rachel, R.N., Odyssey Hospice
McDaniel, Lee, M.D.
Merville, LaDonna, Vice President, Hospital Alliance of Tennessee
Moore, Carl
Moreland, Michael, CEO, Middle Tennessee Imaging
Ockerman, Jeff, Director, Division of Health Planning, Tennessee Department of Health
Reed, Ann, R., RN, BSN, MBA, Director of Licensure, Div. of Health Care Facilities, Tenn. Dept. of Health
Smith, Gordon, DPh., Area Vice-President, Gentiva Health Services
Tally, Sarah Lodge, Esq., Butler, Snow
Taylor, Jerry W., Esq., Farris, Mathews, Bobango, PLC
Trauger, Byron R., Esq., Trauger & Tuke
Wellborn, John L., Consultant, Development Support Group
West, William H., Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz

Chairman Johnson called the meeting to order at 8:30 a.m. in Meeting Room 12, of The Legislative Plaza, Nashville, Tennessee.

DIRECTOR'S ANNOUNCEMENTS

Melanie Hill, Executive Director, made the following general announcements:

- 1) Instructions were provided for those providing testimony on the scheduled agenda items;
- 2) Status of Agenda items:
 - Withdrawn applications—Reeves Eye Surgery Center and Satellite Med;
 - Deferred applications—Baptist Memorial Hospital-Huntingdon (deferred to September) and Baptist Center for Cancer Care (deferred to November);
 - Southeast Eye Surgery Center-Opposition withdrawn
 - General Counsel's Report— Item C, Memphis Long Term Care Specialty Hospital deferred to the September meeting.
- 3) Audit Committee members and the Audit Committee Chair will be chosen by Agency members at the conclusion of the meeting.
- 4) Number of applications scheduled for upcoming meetings -- seven (7) for September; four (4) for October; and possibly ten (10) for November
- 5) Meeting location - October through December meetings will be held in Room 12 at the Legislative Plaza; Staff has been advised that the September meeting will not be at Legislative Plaza due to renovations. Location will be announced as soon as a new site is secured.
- 6) The Joint Government Operations Sub-Committee for Education, Health, and Welfare met Tuesday, August 21, 2012 to review the Agency's Sunset Performance. The Sub-Committee recommended that the Agency be renewed for four (4) years. The recommendation will now go to the full Committee;
- 7) Recognition and thanks were extended to:
 - Jim Christoffersen, General Counsel and Legislative Liaison, for the excellent job he did both in preparation for and for his performance at the Sub-Committee meeting.
 - Chairman Johnson, Vice-Chair Burns, Ms. Jordan and Ms. Weaver for being present at the Sub-Committee meeting.

STATE HEALTH PLAN UPDATE

Jeff Ockerman, Director, Division of Health Planning, Department of Health reported the following:

The Hospice Questionnaire was released for comments on August 21, 2012 with responses due by September 13, 2012. After receipt, suggested changes will be made and a Public Hearing will be scheduled for mid-October.

The ASTC proposed revisions will be released by the end of August with the Public Hearing to be held mid-September.

A meeting had been held with the Department of Mental Health and Substance Abuse Services to discuss the non-residential substitute narcotic clinics (f/k/a methadone clinics). Work on a questionnaire will begin soon.

Effective August 1st, the Division of Health Planning was moved from the Department of Finance & Administration to the Department of Health.

CERTIFICATE OF NEED APPLICATIONS

Mark Farber summarized the following CON applications:

Reeves Eye Surgery Center - (Johnson City, Washington County) - Project No. CN1204-018

The establishment of a single-specialty ambulatory surgical treatment center (ASTC) limited to ophthalmology. It will have one (1) operating room and one (1) laser procedure room. The project does not contain major medical equipment or initiate or discontinue any other health service; and will not affect any licensed bed complements. Project Cost \$1,266,514.00.

DEFERRED FROM THE JULY MEETING WITHDRAWN

Baptist Memorial Hospital - Huntingdon - (Huntingdon, Carroll County) - Project No. CN1205-021

The conversion of twelve (12) acute care beds currently used as medical-surgical beds to twelve (12) geriatric psychiatric beds. The hospital proposes to initiate a geriatric psychiatric service to be managed by Psychiatric Resource Partners. The project involves the renovation of approximately 4,600 square feet. There are no additional services, major medical equipment, or additional beds involved. There will be no change in the hospital licensed total bed count of 70 beds. Project Cost \$727,000.00.

DEFERRED TO THE SEPTEMBER MEETING

Satellite Med, LLC - (Cookeville, Putnam County) - Project No. CN1205-022

The establishment of an outpatient diagnostic center (ODC) and initiation of magnetic resonance imaging (MRI) services. The ODC site will be at 1300 Bunker Hill Road, Cookeville (Putnam County), TN 38506. The only service to be provided by the ODC will be MRI services. The ODC will be licensed by the Tennessee Department of Health. Project Cost \$695,000.00.

WITHDRAWN

Mr. Southwick recused.

Southeast Eye Surgery Center - (Knoxville, Knox County) - Project No. CN1205-023

The establishment of a specialty ambulatory surgical treatment center (ASTC) for eye and related procedures. The facility will seek licensure by the Tennessee Department of Health as an ASTC limited to ophthalmology, including eye and oculoplastics procedures. It will have one (1) operating room and one (1) laser procedure room. Project Cost \$3,183,836.00.

Byron R. Trauger, Esq., representing the applicant, addressed the Agency and Lee McDaniel, M.D. spoke on behalf of the project. Present were: John R. Brierly, M.D.; Daryl F. Mann, O.D.; and John L. Wellborn, Consultant.

Ms. Jordan moved for approval of the specialty ambulatory surgical treatment center (ASTC) limited to eye and related procedures based on: 1) Need – The application meets the Guidelines for Growth for an additional ASTC, and the need also exists because there are problems in obtaining sufficient OR time which limits productivity; 2) Economic Feasibility – The application is financially feasible. The applicant has access to a commercial loan, and it is projected it will realize positive income in the first two years of operation; and 3) The project does contribute to the orderly development of adequate and effective health care as the other ASTCs in the area will not be significantly adversely affected, and by increasing the productivity they can continue to serve patients in rural areas. **CONDITION: Limited to patients of Southeast Eye Specialists, LLC.** Ms. Burns seconded the motion. The motion CARRIED [6-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Burns, Weaver, Johnson

NAY: None

Mr. Gaither recused.

Odyssey Hospice - (Nashville, Davidson County) - Project No. CN1205-024

The addition of Sumner and Trousdale counties to the existing licensed service area of Odyssey Hospice which currently consists of: Cannon, Davidson, Robertson, Rutherford, Williamson and Wilson counties. Project Cost \$43,000.00.

William H. West, Esq., representing the applicant, addressed the Agency. Speaking in support of the project were: Gordon Smith, DPh., Area Vice-President, Gentiva Health Services; and Ralf Haberman, Medical Director. Rachel Martin, R.N. was present in support.

Speaking in opposition were: Dan H. Elrod, Esq., representing HighPoint Hospice; and Alyson Cutshall, Vice President, Caris Healthcare. Responding to questions by members were: Micheal Herman, COO, HighPoint Hospice; and Cheri Crowley, Intermediate Director, HighPoint Hospice. Present was: Sarah Lodge Tally, Esq.

Mr. West rebutted.

Mr. Elrod provided summation for opposition.

Mr. West provided summation for the applicant.

Ms. Burns moved for denial of the project for the addition of Sumner and Trousdale counties to the hospice service area based on: 1) Need – Guidelines show there is actually a surplus. The applicant has not demonstrated that there is a need. Most importantly, there is no evidence that care is being delayed or denied based upon the current providers; 2) Economic Feasibility – The project is not economically feasible due to there not being a need for this service; and 3) The project does not contribute to the orderly development of adequate and effective health care because it will negatively impact the other providers. Ms. Jordan seconded the motion. The motion CARRIED [6-0-0]. **DENIED**

AYE: Jordan, Mills, Burns, Weaver, Southwick, Johnson

NAY: None

Baptist Center for Cancer Care - (Germantown, Shelby County) - Project No. CN1205-026

Modification of CN1105-018A, which authorized the establishment of a comprehensive cancer center known as Baptist Center for Cancer Care (BCCC). The original projects and proposed modifications are as follows:

- 1) CN1105-018A, which approved new construction of approximately 105,291 square feet. The proposed modification increases the size of the facility by 52,688 square feet to a total of 157,979 square feet;

- 2) CN1105-018A, approved the relocation of a PET/CT from Baptist Memorial Hospital-Memphis (BMHM) and initiation of PET/CT services at BCCC. The proposed modification will be to relocate the PET/CT scanner acquired by Baptist Memorial Hospital-Tipton (BMHT) under CN1111-050A and currently located at 5945 Wolf River Blvd., Germantown (Shelby County), TN 38138 to BCCC. The PET/CT at BMHM will remain in place;
- 3) CN1105-018A approved the relocation of two (2) linear accelerators and other radiation oncology equipment along with the cyberknife linear accelerator from BMHM and initiation of linear accelerator services at BCCC. The proposed modification is to replace one (1) of the existing linear accelerators when installed at BCCC. The replaced unit will be taken out of service; and
- 4) CN1105-018A approved for a project cost of \$64,925,225. The proposed modification will increase the project cost by \$29,117,691 to a total of \$94,042,916.

The location of BCCC continues to be at 1238 and 1280 South Germantown Parkway, Germantown (Shelby County), TN 38138. The project does not involve change in any service previously approved, the addition of beds or any other service for which a certificate of need is required; and 4) One of the exiting linear accelerators to be relocated from BMHM will be replaced when installed at BCCC. The project does not involve change in any service previously approved, the addition of beds or any other service for which a certificate of need is required. Project Cost \$94,042,916.00.

DEFERRED TO THE NOVEMBER MEETING

GENERAL COUNSEL'S REPORT

Jim Christoffersen summarized the following CON modification requests:

Saint Francis Hospital - (Memphis, Shelby County) - Project No. CN0803-023A

Request for a two (2) month extension of the expiration date from September 1, 2012 to November 1, 2012: The project was approved at the July 23, 2008 Agency meeting for the acquisition of a Cyberknife Stereotactic Radiosurgery System to be installed at the hospital's main campus as an alternative to, but not a replacement of the linear accelerator radiation oncology services already provided at the hospital. The project cost was \$6,651,513.

Kim H. Looney, Esq., representing the applicant, addressed the Agency.

Ms. Jordan moved for approval of the request for a two (2) month extension of the expiration date from September 1, 2012 to November 1, 2012. Mr. Southwick and Ms. Burns seconded the motion. The motion CARRIED [7-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Burns, Weaver, Southwick, Johnson
NAY: None

St. Thomas Outpatient Imaging - Baptist - (Nashville, Davidson County) - Project No. CN1108-031A

Request for modification: Increase the number of magnetic resonance imaging (MRI) units in the approved but unimplemented outpatient diagnostic center (ODC) from one (1) to two (2) by relocating a 3.0T MRI which will be donated from Baptist Hospital. The modification would also include building out an additional room to house the second MRI. The project cost will increase by \$395,000. This project was approved at the November 16, 2011 Agency meeting for the establishment of an ODC and the initiation of MRI services in space leased from Baptist Hospital. Baptist Hospital committed to deactivate an existing MRI when the original project was completed so there would not be no additional MRI capacity in the market. The total project cost would increase from \$3,608,100 to \$4,003,100.

Dan H. Elrod, Esq., representing the applicant, addressed the Agency.

Ms. Jordan moved for approval of the request for modification to increase the number of MRI units in the approved but unimplemented outpatient diagnostic center from one (1) to two (2) by relocating the unit from Baptist Hospital. Ms. Weaver and Mr. Mills seconded the motion. The motion CARRIED [6-0-1]. **APPROVED**

AYE: Jordan, Mills, Gaither, Burns, Weaver, Johnson

NAY: None

ABSTAINED: Southwick

Memphis Long Term Care Specialty Hospital - (Memphis, Shelby County) - Project No. CN0908-046A

Request for change of control of an approved but unimplemented certificate of need: Shelby County Health Care Corporation d/b/a The MED proposes to acquire all of the issued and outstanding equity in Memphis Long Term Care Specialty Hospital, LLC which owns the referenced certificate of need. This project was approved at the November 18, 2009 Agency meeting for the relocation and replacement of the twenty-four (24) bed long term acute care hospital to a new facility to be constructed. The project cost was \$7,617,100.

DEFERRED TO THE SEPTEMBER MEETING

CONTESTED CASE

Mr. Christoffersen provided an update on contested cases.

OTHER BUSINESS

Ms. Hill noted that Audit Committee members and chair will serve a one (1) year term and can be re-appointed. Board members that served last year were: Ms. Burns, Chair; Mr. Lammert; Mr. Southwick; Ms. Jordan; and Mr. Johnson.

Ms. Hill opened the floor for nominations.

Mr. Johnson nominated Mr. Southwick, Ms. Burns and Ms. Jordan.

Mr. Southwick nominated Mr. Doolittle.

Ms. Jordan nominated Mr. Gaither.

Ms. Burns nominated Mr. Southwick as Chair of the Audit Committee.

Mr. Johnson ceased nominations.

The motion CARRIED by unanimous voice vote [7-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Burns, Weaver, Southwick, Johnson

NAY: None

MINUTES

Mr. Southwick motioned to accept the minutes of the July 25, 2012, meeting. Ms. Burns seconded the motion. The motion CARRIED by unanimous voice vote [7-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Burns, Weaver, Southwick, Johnson

NAY: None

ADJOURNMENT

There being no further business, the meeting adjourned.

Melanie M. Hill, Executive Director

MMH/mab

* Minutes provide only a brief staff summary of the meeting and are not intended to be an all-inclusive report. The HSDA maintains a detailed record of each meeting (recording and transcript) that is available upon request by contacting the HSDA office at 615-741-2364.